

LOVITT & HANNAN, INC.

ATTORNEYS AT LAW

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Attorneys for Defendants
 K-M Industries Holding Co. Inc.;
 K-M Industries Holding Co. Inc. ESOP Plan Committee;
 and CIG ESOP Plan Committee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THOMAS FERNANDEZ and LORA)	Case No. C06-07739 MJJ
SMITH, individually and on behalf of a)	
class of all others similarly situated,)	STIPULATION AND [PROPOSED]
)	ORDER RE FOIA DISCOVERY
Plaintiffs,)	
v.)	
)	
K-M INDUSTRIES HOLDING CO., INC.;)	
K-M INDUSTRIES HOLDING CO. INC.)	
ESOP PLAN COMMITTEE; WILLIAM E.)	
AND DESIREE B. MOORE REVOCABLE)	
TRUST; ADMINISTRATOR OF THE)	
ESTATE OF WILLIAM E. MOORE,)	
DECEASED; CIG ESOP PLAN)	
COMMITTEE; and NORTH STAR TRUST)	
COMPANY,)	
)	
Defendants.)	

WHEREAS, Plaintiffs made a Freedom of Information Act ("FOIA") request
 for information to the Department of Labor ("DOL") on December 22, 2006

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1 requesting information regarding the K-M Industries Holding Co., Inc. Employee
2 Stock Ownership Plan, the Kelly-Moore Paint Co. Employee Stock Ownership Plan,
3 and the Capital Insurance Group Employee Stock Ownership Plan ("K-M ESOPs");

4 WHEREAS, one Defendant presently has the opportunity to submit to DOL
5 objections under Exemption 4;

6 WHEREAS, Defendants desire to produce all documents to Plaintiffs that it
7 produced to the Department of Labor and Defendants desire that the confidentiality of
8 any such documents that Defendants designate as "CONFIDENTIAL" or "HIGHLY
9 CONFIDENTIAL" be protected under the Stipulated Protective Order signed by the
10 parties;

11 WHEREAS, the Parties to the above titled litigation desire to make discovery
12 in this litigation efficient and cost effective while ensuring that both parties have
13 proper access to documents sent to DOL by Defendants;

14 Accordingly, IT IS HEREBY AGREED AND STIPULATED by the parties
15 through their counsel of record that:

16 1. Defendants will not claim protection under any Exemption, including
17 Exemption 4, with the Department of Labor and will withdraw any previously asserted
18 claims for protection under any Exemption, including Exemption 4, in writing, with a
19 copy of such correspondence copied to Plaintiffs' Counsel. Defendants will, in the
20 same writing, state that they do not object to DOL, in its discretion, producing to
21 plaintiffs the documents that Defendants submitted to the DOL.

22 2. Defendants are unaware of any non-Defendant who has, or intends to,
23 claim protection under any exemption regarding documents submitted to the DOL
24 regarding the K-M ESOPs. Defendants will not encourage any person or entity to
25 claim protection under exemption regarding documents submitted to the DOL
26 regarding the K-M ESOPs.

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3. Plaintiffs agree to hold all documents that were submitted to the Department of Labor by Defendants that Plaintiffs receive from DOL in response to Plaintiffs' present or future FOIA request(s) as "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY" according to the terms of the Stipulated Protective Order signed by the parties until 30 calendar days after Plaintiffs provide such documents to Defendants;

4. Plaintiffs and Defendants agree that Plaintiffs will provide to Defendants an electronic or paper copy of all documents that are provided to Plaintiffs by DOL in response to Plaintiffs' present or future FOIA request(s), within 15 calendar days of Plaintiffs' receipt of such documents.

5. Within 30 calendar days after receipt from Plaintiffs, Defendants agree to review all documents sent by Plaintiffs to designate any documents they intend to be protected by the Stipulated Protective Order, except that Defendants may not designate as confidential any documents provided to Plaintiffs by DOL that were not submitted to DOL by Defendants (for example, any documents created by DOL or submitted by parties other than Defendants). Plaintiffs' obligation under Paragraph 2 to hold all documents received from DOL as "HIGHLY CONFIDENTIAL" will expire upon 30 days or upon Defendants' review and designation. When Defendants have completed their review and designation under this paragraph, only those documents designated by Defendants to be protected by the Stipulated Protective Order will be covered by the terms of the Stipulated Protective Order.

6. Plaintiffs and Defendants agree that Defendants will provide to Plaintiffs an electronic or paper copy of all documents that are provided to Defendants by DOL in response to Defendants' present or future FOIA request(s), within 15 calendar days of Plaintiffs' receipt of such documents.

7. Nothing in this Stipulation shall alter any party's right to challenge,

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1 under the terms of the Stipulated Protective Order, the designation of any document as
2 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" except that during the period
3 described in paragraph 2 above all documents will be held as "HIGHLY
4 CONFIDENTIAL."

5
6
7
8 DATED: February ___, 2007

LOVITT & HANNAN, INC.

9
10
11 By: _____

12 Ronald Lovitt
13 Attorneys for Defendants K-M Industries Holding
14 Co., Inc.; K-M Industries Holding Co., Inc. ESOP
15 Plan Committee; and CIG ESOP Plan Committee

16
17
18 DATED: February ___, 2007

HENNIGAN, BENNETT & DORMAN LLP

19
20
21 By: _____

22 Robert L. Palmer
23 Attorneys for Defendant William E. And Desiree
24 B. Moore Revocable Trust

25
26
27 DATED: February ___, 2007

MORGAN LEWIS

28
By: _____

Lisa Serebin
Attorneys for Defendant North Star Trust
Company

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DATED: February __, 2007

LEWIS, FEINBERG, LEE, RENAHER &
JACKSON, P.C.

By: _____

Todd Jackson

Attorneys for Plaintiffs Thomas Fernandez and
Lora Smith

Good cause appearing, it is APPROVED: and IT IS SO ORDERED.

DATED: _____

Honorable Martin J. Jenkins
UNITED STATES DISTRICT JUDGE